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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,858

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Jason Tyler Griffin

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27975

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EXAMINER

VU, MICHAEL T

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/784,858	Applicant(s) GRIFFIN, JASON TYLER	
	Examiner Michael Vu	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's Remarks/Arguments filed August 21, 2006, have been fully considered but they are not persuasive.
2. In response to applicant's Remarks/Arguments in claims 1, 10, 17 and 23 that "while the examiner correctly acknowledges that Aarnio fails to teach or fairly suggest a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold" on page 11, line 18-24.
3. Examiner respectfully disagrees. The examiner did not admitted that Aarnio fails to teach or fairly suggest a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station.

However, contrary Aarnio teaches a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station (See an Office Action filed on May 19, 2006, and/or *Figures 1-2, paragraphs* [0012, 0021-0023]).

Furthermore, Dolwin teaches the determined available capacity thereof is greater than a threshold.

However, an Examiner must give the broadest reasonable interpretation to all claims 1, 10, 17 and 23 that Dolwin teaches the data transmission system that includes a plurality of radio base stations in communication with a plurality of mobile communications devices over a radio interface, in which an operation and maintenance centre (OMC) collects the statistics from network infrastructure elements such as base stations and switches to provide network operators with a high level view of the network's performance. The OMC uses to determine how much of the available capacity of the network or parts of the network is being used at different times of day. The time of low traffic may be identified by detecting when measured traffic at an interface falls below a threshold level or by analyzing historical data to determine a period when low traffic is expected. The reference to the traffic going below a threshold level could in some systems, be described more accurately as available capacity in the system going above a certain threshold [0004, 0013-0015].

4. In response to applicant's Remarks/Arguments in claims 1, 10, 17 and 23 that "as there is no proper motivation or suggestion to selectively combine the reference references as the Examiner proposes" on page 12, line 4-6, and 29-30.

5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Aarnio teaches an on line subscription system (10) that includes a mobile or a wireless communication network (12) for communicating with a mobile terminal. Furthermore, the subscription system includes a subscription server (20) in which connected to the Internet for transmission to the user's mobile terminal [0020]. However, Aarnio does not clearly teach the when the determined available capacity thereof is greater than a threshold or in the same field of endeavor, Dolwin clearly teach the feature to enhance capacity of the network traffic to be more accurately when transmit files over the communications network such as analyzing historical data to determine a period when low traffic is expected is being used at different times of day [0004, 0013-0015]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made modify Aarnio, such that when the determined available capacity thereof is greater than a threshold, to enhance the capacity of the traffic over the communication network.

#### DETAILED ACTION

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over AARNIO (US 2004/0078274) in view of Dolwin (US 2003/0092421).

Regarding **claims 1, 10, 17 and 23**, AARNIO teaches a cellular communications system (Fig. 1, Mobile Terminal #14 and Mobile Network/Base Station #12) comprising: a plurality of mobile cellular communications devices each associated with a respective user (Fig.1-2); at least one cellular base station (Fig. 1) for wirelessly communicating with said plurality of mobile cellular communications devices (Fig. 1), said at least one cellular base station having a capacity associated therewith (Fig. 1-2); and a central station (Mobile Provider/Mobile Switching Center, [0002]) for determining available capacity of said at least one cellular base station based upon active wireless communications with said mobile cellular communications devices [0012, 0021-0023];

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and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station [0012, 0021-0023] **but is silent on** when the determined available capacity thereof is greater than a threshold.

However, Dolwin teaches the data transmission system that includes a plurality of radio base stations in communication with a plurality of mobile communications devices over a radio interface, in which an operation and maintenance centre (OMC) 29 collects the statistics from network infrastructure elements such as base stations and switches to provide network operators with a high level view of the network's performance. The OMC uses to determine how much of the available capacity of the network or parts of the network is being used at different times of day. The time of low traffic may be identified by detecting when measured traffic at an interface falls below a threshold level or by analyzing historical data to determine a period when low traffic is expected. The reference to the traffic going below a threshold level could in some systems, be described more accurately as available capacity in the system going above a certain threshold [0004, 0013-0015].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify AARNIO, such that when the determined available capacity thereof is greater than a threshold, to improve the performance of the less traffic and more efficient data/electronic transfer files over the wireless communications network.

Regarding **claims 2, 18 and 24**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein said subscription server cooperates with said central station to discontinue providing subscription data when the determined available capacity falls below the threshold [Fig. 1 Prior Art, 0004, 0013-0015] of Dolwin.

Regarding **claims 3, 19, and 25**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein said subscription server cooperates with said central station to discontinue providing subscription data to respective mobile cellular communications devices based upon an initiation of a telephone call [0021, 0025] of Dolwin.

Regarding **claims 4, 11 and 26**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein said central station maintains accounts for respective users; wherein said central station charges user accounts differently for providing wireless voice communications and non-real time subscription data [0010-0013, 0020-0023] of AARNIO.

Regarding **claims 5, 12 and 27**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein said at least one cellular base station generates capacity usage information, and wherein said central station determines the available capacity based thereon [0004, 0013-0015] of Dolwin.

Regarding **claims 6, 13, 20 and 28**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein said subscription server further cooperates with said central station to provide a subscription data menu to users on respective mobile cellular communications devices, and wherein users order non-real time



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subscription data based upon the subscription data menu [0004, 0023-0026] of AARNIO.

Regarding **claims 7 and 14**, AARNIO/Dolwin teach a cellular communications system of claim 1 further comprising a wide area network (WAN) connecting said subscription server to said central station (Fig. 1, Prior Art) of Dolwin.

Regarding **claims 8, 15, 21 and 29**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein the subscription data comprises at least one of news articles, books, video game data, image data, and television programming schedule data [0004, 0022-0023] of AARNIO.

Regarding **claims 9, 16, 22 and 30**, AARNIO/Dolwin teach a cellular communications system of claim 1 wherein the subscription data comprises electronic mail (email) data (Short Message Service SMS [0011]) of AARNIO.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vu whose telephone number is (571) 272-8131. The examiner can normally be reached on 8:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on 571-272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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